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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

 $\mathbf{V}$  .

BERTHA'S MARKETING and BERTHA MANZO,

Defendants.

NO. CR-03-2225-EFS

NO. CR-03-2226-EFS

ORDER DENYING DEFENDANTS' MOTION TO DISMISS CASE AND RESETTING TRIAL

Previously the Court entered an Order Denying In Part and Holding in Abeyance in Part Defendants' Motion to Dismiss Case, (Ct. Rec. 77). The Court reserved ruling on two legal issues: whether the Second Superseding Indictment sufficiently stated deprivation of a valid property interest of the Mexican Government and whether the United States can prosecute a fraudulent scheme to evade payment of foreign tariffs under 18 U.S.C. § 1343, awaiting a decision from the U.S. Supreme Court in United States v. Pasquantino. On April 26, 2005, the Supreme Court issued a decision in Pasquantino, No. 03-0725 (S. Ct. filed April 26, 2005), ruling that a plot to defraud a foreign government, Canada, of tax revenue violates the federal wire fraud statute and that the scheme of smuggling liquor into Canada from the United States without paying

Canadian liquor taxes deprived the Canadian government of a property interest.

The Court finds the Second Superseding Indictment sufficiently alleges that the Mexican government was deprived of "money or property" within the meaning of the wire fraud statute. See Pasquantino, No. 03-725. The Second Superseding Indictment alleges that the government of Mexico was deprived of the payment of its 101.1% tariff upon red and golden delicious apples imported into Mexico from the United States. The right to collect the tariff is "an entitlement to collect money from [the defendants], the possession of which is 'something of value' to the" government of Mexico. Pasquantino (quoting McNally v. United States, 483 U.S. 350, 358 (1987) (internal quotation marks omitted)). Accordingly, Defendants' motion is denied in part.

Defendants also argued it was unconstitutional for a federal wire fraud statute to criminalize conduct violating a foreign law. The Court denies the Defendants' motion finding that the United States is not barred from prosecuting a fraudulent scheme to evade foreign tariffs. See Pasquantino.

## Accordingly, IT IS HEREBY ORDERED:

- 1. Defendant Bertha's Marketing and Bertha Manzo's Motion to Dismiss Case, (NO. CR-03-2225-EFS: Ct. Rec. 42; NO. CR-03-2226-EFS: Ct. Rec. 41), is DENIED.
- 2. The Pretrial Conference is SET for May 4, 2005, at 9:30 a.m. in Richland, Washington.

| 1  | 3. The jury trial is SET for May 9, 2005, at 9:00 a.m. in Richland,       |
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| 2  | Washington. Counsel shall meet with the Court in Chambers at 8:15 a.m.    |
| 3  | on the day of trial.  |
| 4  | 4. Trial briefs, requested voir dire, and joint proposed jury             |
| 5  | instructions shall be filed and served NO LATER THAN May 5, 2005. Joint   |
| 6  | jury instructions should only address issues that are unique to this      |
| 7  | case, and shall include instructions regarding the elements of each claim |
| 8  | or defense, and a proposed verdict form.                                  |
| 9  | IT IS SO ORDERED. The District Court Executive is directed to enter       |
| 10 | this Order and to provide copies to all counsel, the U.S. Probation       |
| 11 | Office, and the Jury Administrator.                                       |
| 12 | DATED this28th day of April, 2005.  |
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| 14 | S/ Edward F. Shea<br>EDWARD F. SHEA                                       |
| 15 | United States District Judge  |
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